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desire to trade an excess number of shares based on said information;

discovering an optimal price at which a maximum number of said shares

identified by said plurality of orders will be executed; and

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executing a trade of said maximum number of shares and said excess number of
shares at said optimal price; and

~~allocating said executed maximum number of shares and said excess number of
shares fairly among orders from said qualified participants and said intermediary.~~

REMARKS

Claims 1-31 remain pending in this application. Reconsideration is requested.

Reconsideration and withdrawal of the rejection of claims 1-31 under 35 U.S.C. § 112, and the rejection of claims 1-19, 30 and 31 under 35 U.S.C. § 101 is requested in view of the amendments to the claims eliminating any issues of indefiniteness or non-statutory subject matter that may have existed. Definiteness of claim language must be assessed in light of the specification and the knowledge of those of ordinary skill in the art at the time of the invention, and not in a vacuum. Additionally, indefiniteness should not be confused with breadth of claim language. A claim must define the subject matter that the inventor regards as his invention with only a reasonable degree of particularity.

The specification explicitly defines the predetermined set of criteria that are used to determine whether or not to accept new orders or modifications of prior orders during

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the order acceptance period. See, e.g. Fig. 2 and its corresponding explanation.

Further, § 101 enumerates four classes of statutory subject matter: a process, a machine, an article of manufacture, or a composition of matter. § 101 has been construed broadly to encompass "anything under the sun that is made by man." Diamond v. Chakrabarty, 447 U.S. 303, 309 (1980). The Supreme Court has specifically identified three categories of non-statutory or unpatentable subject matter: laws of nature, natural phenomena, and abstract ideas. Diamond v. Diehr, 450 U.S. 175, 182 (1981). Claims 1-19, 30 and 31 are directed to methods for conducting auctions of financial securities. The result of the claimed methods is that trade orders are executed, and shares of financial securities are exchanged between buyers and sellers, clearly a useful, concrete and tangible result. As such, it is of no consequence whether all, part or none of the steps of the method are carried out on a computer because the method itself produces a concrete, tangible and useful result. See State Street Bank & Trust Co. v. Signature Fin. Group, Inc., 149 F.3d 1368, 1372-75 (Fed. Cir. 1998). The Examiner appears to have confused a mental process (which is non-statutory) with a manual process. There is nothing objectionable about a manual process under the law. The MPEP Examination Guidelines for Computer-Related Inventions (which appears to be attempted to be applied in the Office action) do not stand for the proposition that manual processes constitute non-statutory subject matter. Reconsideration and withdrawal of the indefiniteness and non-statutory subject matter

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rejections is requested.

The rejection of claims 1-31 under 35 U.S.C. § 102(e) as being unpatentable over U.S. Patent No. 6,421,653 to May is respectfully traversed. May is directed to an internet-based trading system, which enables traders to identify bids and offers that they are eligible to trade based on a color coding scheme. The color coding system considers the credit rating of the potential counterparties to the trade, and is intended to be used with trading financial instruments for which the credit rating of parties is an important factor. See the Abstract. May explicitly states that auto-matching of orders is not performed, see col. 33, ll. 31-34, and thus the individual traders necessarily would be the entities matching orders and selecting prices, contrary to the requirements of the claimed invention.

The present invention is directed to batch auctions that can be conducted during opening and closing of continuous financial markets for a security, and additionally can be carried out throughout the trading day, which achieves a price discovery that reflects true market forces while eliminating the gaming that is prevalent in the prior art auction processes. According to the invention, participants in the batch auction are provided with current order information entered into the order book during the acceptance period, such as an indicated price and trade order imbalance. In return, participants are allowed to enter new orders and/or modify previous orders only if they satisfy a set of predetermined criteria, as fully explained with reference to Fig. 2 of the application.

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Consequently, the opportunity for gaming is substantially reduced or eliminated, while allowing participants to place orders based on a fuller understanding of true market conditions. May does not teach any methodology for accepting new or modified orders during an order acceptance period, where selected information regarding orders is transmitted to auction participants during the order acceptance period. May further does not disclose any process for calculating an optimal price at which a maximum number of shares will be traded upon execution of a batch auction. May simply describes the best bid and best ask as the best price. Each bid or offer is color coded to take into consideration credit preferences, etc. May fails to disclose or suggest a method or system for conducting a batch auction of a financial security as disclosed and claimed in the present invention.

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In view of the foregoing, favorable reconsideration of this application, withdrawal of all outstanding grounds of rejection, and the issuance of a Notice of Allowance are earnestly solicited.

Please charge any fee or credit any overpayment pursuant to 37 CFR 1.16 or 1.17 to Deposit Account No. 02-2135.

Respectfully submitted,

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